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Attorneys for Debtors and Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA, NORTHERN DIVISION

In re

) BK No. 9:14-bk-10379-PC

ROBERT LEE RAINS and
BETTY SUE RAINS,

) Chapter 11

Debtors.

) NOTICE OF HEARING AND
) RESPONSE TO DAVID BLACKBURN'S
) OPPOSITION TO APPLICATION TO
) EMPLOY J. EDUARDO PINEDA
) MARTINEZ AS SPECIAL COUNSEL
) TO DEBTORS AND DEBTORS-IN-
) POSSESSION; AND DECLARATION
) OF ROBERT RAINS

Hearing:

) Date: August 27, 2014

) Time: 9:30 a.m.

) Place: 1415 State Street

) Courtroom 201

) Santa Barbara, CA

1 **1. Introduction**

2 Robert Lee Rains and Betty Sue Rains, debtors and debtors-
3 in-possession (the "Debtors"), own real property in Cabo San
4 Lucas, Mexico (the "Mexico Property") and entered into an
5 agreement to sell the property to David Blackburn prepetition.
6 Postpetition the sale was approved by the court pursuant to
7 section 363 of the Bankruptcy but Blackburn failed to close
8 according to the agreement, thus forfeiting his deposits.
9 Blackburn filed an adversary complaint in the bankruptcy case
10 in an apparent attempt to recover the deposits, and has
11 threatened to sue the Debtors in Mexico to block the sale of
12 the Mexico Property to another buyer. In the meantime, the
13 Debtors have entered into an agreement to sell the property to
14 another buyer.

15 In order to facilitate the sale of the Mexico Property and
16 to deal with possible litigation with Blackburn in Mexico, the
17 Debtors require the services of attorney J. Eduardo Pineda
18 Martinez ("Martinez") and his law firm, PMLawBaja, S.C.
19 ("PMLaw"). The Debtors filed an application to employ Martinez
20 and PMLaw, and Blackburn filed the only objection. Pursuant to
21 Local Bankruptcy Rules 2014-1(b)(5) and 9013-1(o)(4), the
22 Debtors set a hearing on the application for the above time and
23 place, and hereby respond to Blackburn's objection as follows:

24 **2. Background**

25 **a. Debtors' Relationship with Martinez**

26 Martinez is a licensed attorney in Mexico with a legal
27 practice in Cabo San Lucas, San Jose del Cabo, La Paz and
28 Loreto, Baja California Sur. He has practiced for seventeen

1 years and has extensive experience representing businesses and
2 individuals in Baja California Sur and has offices in San Jose
3 del Cabo, La Paz and Loreto.

4 The Debtors founded, operated, and in 2005, sold, a marine
5 chandlery business in Baja California, Mexico. Following the
6 sale of the business, the Debtors retained a minority interest
7 in the business and real estate upon which the business
8 operated. Following the sale of the business, the Debtors
9 spent less and less time in Mexico, and needed someone on site
10 to look after the Mexico Property in their absence to ensure
11 that it was adequately maintained and to deter vandals. The
12 Debtors also needed someone in Mexico to attend to issues with
13 local governmental authorities and the Mexico Property's
14 homeowners association.

15 The buyer of the marine chandlery business referred the
16 Debtors to Martinez, his attorney. After discussing the
17 Debtors' needs and visiting the Mexico Property, Martinez and
18 the Debtors agreed that Martinez would serve as the property
19 manager of the property in exchange for the right to use the
20 Mexico Property's execute office, which has a separate entry
21 from the rest of the house. In addition, Martinez would share
22 in the cost of utilities and out-of-pocket maintenance
23 expenses. At this point Martinez's services were primarily as
24 a property manager and as the Debtors' trusted local set of
25 eyes and ears to watch over the Mexico Property.

26 **b. Debtors' Dispute with Blackburn**

27 In September 2013, the Debtors entered into an agreement
28 to sell the Mexico Property to Blackburn. Under the Offer to

1 Purchase, Blackburn was obligated to close the sale by December
2 11, 2013. Blackburn failed to close by December 11, but
3 offered to pay additional non-refundable deposits to extend the
4 closing date. In January 2014, Blackburn signed an amendment
5 to the purchase agreement requiring him to pay additional non-
6 refundable deposits, extending the closing date to no later
7 than May 21, 2014, and requiring that Blackburn pay all
8 expenses associated with the Mexico Property beginning January
9 1, 2014.

10 In January 2014 and thereafter, Blackburn failed to pay
11 expenses he was required to pay under the agreement such as
12 water, electricity, landscaping, pool service, housekeeping,
13 and maintenance. To prevent the electricity from being shut
14 down, and to ensure the continued welfare of the Mexico
15 Property, Martinez paid all of the expenses that Blackburn was
16 obligated but failed to pay after January 1, 2014.

17 On February 27, 2014, the Debtors filed this chapter 11
18 bankruptcy case, and on March 31, 2014, the Debtors filed a
19 motion pursuant to section 363 of the Bankruptcy Code for
20 authority to sell the Mexico Property to Blackburn pursuant to
21 the terms of the Offer to Purchase and the January Amendment,
22 which the court granted. The order authorized the Debtors to
23 use certain funds paid by Blackburn and held by counsel for the
24 Debtors to pay expenses necessary to close the sale to
25 Blackburn. At that time, the Debtors reimbursed Martinez for
26 the expenses he incurred as a result of Blackburn's failure to
27 pay post January 1 expenses and to get the property ready to
28 close on May 21, 2014. Blackburn was once again unable to

1 close and defaulted under the Offer to Purchase and the January
2 Amendment.

3 On June 2, 2014, Blackburn filed an adversary complaint in
4 the bankruptcy case against the Debtors asserting that the non-
5 refundable deposits paid to the Debtors are non-dischargeable
6 debts pursuant to Section 523 of the Bankruptcy Code.
7 Blackburn also threatened to sue the Debtors in Mexico to
8 prevent the Debtors from selling the Mexico Property to another
9 buyer.

10 **c. The Debtors' Need for Martinez**

11 On July 30, 2014, Lisa Clapier delivered to the Debtors a
12 short memorandum agreement to purchase the Mexico Property for
13 \$2,200,000. A copy of the agreement is attached to the
14 declaration of Robert Rains as Exhibit "A." A more formal
15 agreement will be signed within days.

16 In order to close the Clapier transaction, the Debtors
17 require the services of an attorney in Cabo San Lucas.
18 Furthermore, in an effort to prevent the Debtors from selling
19 the Mexico Property, Blackburn recently filed a document with
20 the public registrar in Mexico clouding title. To address the
21 issue of clouded title and assist in the potential sale of the
22 property, the Debtors determined that they needed the services
23 of an attorney in Mexico. The Debtors further determined that
24 Martinez is the person most capable and qualified for
25 engagement. Accordingly, the Debtors entered in a retention
26 agreement with Martinez for legal services and filed an
27 application with the court for authority to employ Martinez as
28 special counsel to the estate in Mexico.

1 As was stated in the application, the Debtors believe that
2 Martinez and PMLaw possess the requisite expertise, integrity,
3 skill, and intelligence to properly perform the professional
4 services required by the Debtors, and that retention of the
5 PMLaw as special counsel to Debtors is necessary and beneficial
6 to the estate. PMLaw has a history of dealing with Debtors'
7 properties and knows the legal issues.

8 **3. Martinez Does Not Hold An Interest Adverse To The Estate**

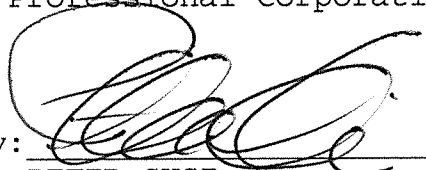
9 The Debtors propose to engage Martinez as special counsel
10 to the estate, for the specified purpose of assisting the
11 Debtors with the sale of the Mexico Property. Section 327(e)
12 does not require special counsel to be "disinterested;" rather,
13 an attorney who represents a debtor-in-possession or trustee as
14 special counsel merely must hold or represent no interest
15 adverse to the estate "with respect to the matter on which such
16 attorney is to be employed." 11 U.S.C. § 327(e) (emphasis
17 added).

18 Martinez does not hold or represent an interest that is
19 adverse to the estate with respect to the sale of or litigation
20 concerning the Mexico Property. Blackburn argues that because
21 Martinez paid expenses for the Mexico Property, he holds an
22 interest adverse to the estate. This misstates the law.
23 First, Martinez does not have a claim against the estate
24 because he has been reimbursed for all expenses paid by him
25 following the court order authorizing the payment of expenses
26 necessary to close the sale. Second, even if Martinez held a
27 claim against the estate, he would not be disqualified from
28 representing the estate as special counsel. In re Albert, 206

1 B.R. 636, 642 n.7 (Bankr. D. Mass. 1997) ("Although the Court
2 has found that [attorney] holds a prepetition claim, he may
3 still be employed [as special counsel]. The disinterestedness
4 requirement contained in § 327(a) is not applicable to [special
5 counsel]."). Here, Martinez does not hold any or represent any
6 interest adverse to the estate, and he certainly does not hold
7 an interest adverse to the estate with respect to the matters
8 for which he is retained. For the reasons set forth herein,
9 the court should grant the Debtors application authorizing them
10 to employ Martinez and PMLaw as special counsel for the
11 purposes and upon the conditions set forth in the application.

12 DATED: Aug 7, 2014

HOLLISTER & BRACE
A Professional Corporation

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16 By: 
PETER SUSI
Attorneys for Debtors and
Debtors-in-Possession
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DECLARATION OF ROBERT RAINS

I, Robert Rains, declare as follows:

1. My wife, Betty Sue Rains, and I are the Debtors and Debtors-in-Possession herein.

2. I have personal knowledge of the facts stated herein and am competent to testify thereto.

3. My wife and I commenced this case by filing a voluntary Chapter 11 petition on February 27, 2014. No trustee has been appointed by the Court, and we remain as debtors-in-possession.

4. My wife and I own real property in Cabo San Lucas, Mexico (the "Mexico Property") and entered into an agreement to sell the property to David Blackburn prepetition.

5. Postpetition the sale was approved by the court pursuant to section 363 of the Bankruptcy but Blackburn failed to close according to the agreement, thus forfeiting his deposits.

6. Blackburn filed an adversary complaint in the bankruptcy case in an apparent attempt to recover the deposits, and has threatened to sue us in Mexico to block the sale of the Mexico Property to another buyer.

7. In the meantime, my wife and I have entered into an agreement to sell the property to another buyer.

8. In order to facilitate the sale of the Mexico Property and to deal with possible litigation with Blackburn in Mexico, we require the services of attorney, J. Eduardo Pineda Martinez ("Martinez") and his law firm, PMLawBaja, S.C. ("PMLaw").

1 9. Martinez is a licensed attorney in Mexico with a
2 legal practice in Cabo San Lucas, San Jose del Cabo, La Paz and
3 Loreto, Baja California Sur. It is my understanding and belief
4 that he has practiced for seventeen years and has extensive
5 experience representing businesses and individuals in Baja
6 California Sur and has offices in San Jose del Cabo, La Paz and
7 Loreto.

8 10. I founded, operated, and in 2005, sold, a marine
9 chandlery business in Baja California, Mexico. Following the
10 sale of the business, my wife and I retained a minority
11 interest in the business and real estate upon which the
12 business operated.

13 11. Following the sale of the business, my wife and I
14 spent less and less time in Mexico, and needed someone on site
15 to look after the Mexico Property in our absence to ensure that
16 it was adequately maintained and to deter vandals.

17 12. We also needed someone in Mexico to attend to issues
18 with local governmental authorities and the Mexico Property's
19 homeowners association.

20 13. The buyer of the marine chandlery business referred
21 me to Martinez, his attorney. After discussing our needs and
22 visiting the Mexico Property, Martinez and I agreed that
23 Martinez would serve as the property manager of the property in
24 exchange for the right to use the Mexico Property's execute
25 office, which has a separate entry from the rest of the house.
26 In addition, Martinez would share in the cost of utilities and
27 out-of-pocket maintenance expenses. At this point Martinez's
28 services were primarily as a property manager and as our

1 trusted local set of eyes and ears to watch over the Mexico
2 Property.

3 14. In September 2013, my wife and I entered into an
4 agreement to sell the Mexico Property to Blackburn. Under the
5 Offer to Purchase, Blackburn was obligated to close the sale by
6 December 11, 2013. Blackburn failed to close by December 11,
7 but offered to pay additional non-refundable deposits to extend
8 the closing date.

9 15. In January 2014, Blackburn signed an amendment to the
10 purchase agreement requiring him to pay additional non-
11 refundable deposits, extending the closing date to no later
12 than May 21, 2014, and requiring that Blackburn pay all
13 expenses associated with the Mexico Property beginning January
14 1, 2014.

15 16. In January 2014 and thereafter, Blackburn failed to
16 pay expenses he was required to pay under the agreement such as
17 water, electricity, landscaping, pool service, housekeeping,
18 and maintenance. To prevent the electricity from being shut
19 down, and to ensure the continued welfare of the Mexico
20 Property, Martinez paid all of the expenses that Blackburn was
21 obligated but failed to pay after January 1, 2014.

22 17. On February 27, 2014, my wife and I filed this
23 chapter 11 bankruptcy case, and on March 31, 2014, we filed a
24 motion pursuant to section 363 of the Bankruptcy Code for
25 authority to sell the Mexico Property to Blackburn pursuant to
26 the terms of the Offer to Purchase and the January Amendment,
27 which the court granted.

28

1 18. The order authorized our bankruptcy counsel to
2 release to us certain funds paid by Blackburn and held in trust
3 by counsel to pay expenses necessary to close the sale to
4 Blackburn. At that time, we reimbursed Martinez for the
5 expenses he incurred as a result of Blackburn's failure to pay
6 post January 1 expenses and to get the property ready to close
7 on May 21, 2014. Blackburn was once again unable to close and
8 defaulted under the Offer to Purchase and the January
9 Amendment.

10 19. On June 2, 2014, Blackburn filed an adversary
11 complaint in the bankruptcy case against us asserting that the
12 non-refundable deposits are non-dischargeable debts pursuant to
13 Section 523 of the Bankruptcy Code. Blackburn also threatened
14 to sue us in Mexico to prevent us from selling the Mexico
15 Property to another buyer.

16 20. On July 30, 2014, Lisa Clapier delivered to me a
17 short memorandum agreement to purchase the Mexico Property for
18 \$2,200,000. A copy of the agreement is attached hereto as
19 Exhibit "A." A more formal agreement will be signed within
20 days.

21 21. In order to close the Clapier transaction, we require
22 the services of an attorney in Cabo San Lucas. Furthermore, in
23 an effort to prevent us from selling the Mexico Property,
24 Blackburn recently filed a document with the public registrar
25 in Mexico clouding title. To address the issue of clouded
26 title and assist in the potential sale of the property, my wife
27 and I determined that we need the services of an attorney in
28 Mexico. We further determined that Martinez is the person most

1 capable and qualified for engagement. Accordingly, we entered
2 in a retention agreement with Martinez for legal services and
3 filed an application with the court for authority to employ
4 Martinez as special counsel to the estate in Mexico.

5 22. As was stated in the application, we believe that
6 Martinez and PMLaw possess the requisite expertise, integrity,
7 skill, and intelligence to properly perform the professional
8 services required by us, and that retention of the PMLaw as
9 special counsel is necessary and beneficial to the estate.
10 PMLaw has a history of dealing with our properties and knows
11 the legal issues.

12 23. Martinez has been reimbursed for all expenses paid by
13 him following the court order authorizing the payment of
14 expenses necessary to close the sale.

15
16 I declare under penalty of perjury that the foregoing is
17 true and correct.

18 Executed this 7th day of August, 2014, at Santa Barbara,
19 California.

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Offer to Purchase Casa Fina A Pedregal Property in Cabo San Lucas Mexico

This offer to purchase is made this 30th day of ~~2013~~ July 2014, by Lisa Clapier or assigns: _____ (BUYER) and Robert and Betty Rains (SELLER).

Buyer wishes to purchase the property known as Casa Fina, located at 25 Carrada Del Sol Pedregal, Cabo San Lucas B.C.S. Mexico.

Buyer wishes to purchase the property as an LLC or have it transferred to an Nevada LLC at closing of escrow.

Buyer acknowledges that this purchase is subject to approval of the Federal Bankruptcy Court. No expenditures shall be made until approval is granted. A Closing date will be established once approval is granted, and a formal Purchase Agreement is signed by both parties.

This is all cash offer of \$2,200,000.00 us.

This offer is subject to Buyer and Seller formalizing a Purchase Agreement that is suitable to the laws of Mexico, and to Buyer and Seller agreeing on the condition and repairs needed on the property at time of closing.

A \$50,000.00us deposit will be made at time of signing or within 10 days thereof. Deposit shall be held in escrow with an Escrow Company and Closing Company, mutually agreeable to both parties. A final payment will be made at closing of \$2,150,000.00 us. Buyer will pay escrow fees, as Mexican Law requires.

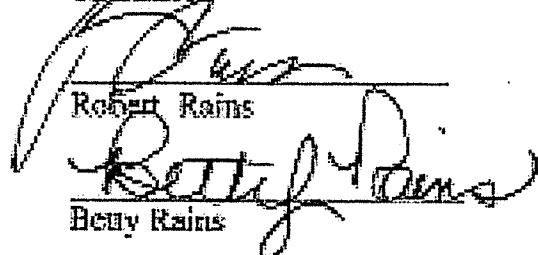
Seller shall warrant that there are no debts, liens, or encumbrances at the time of closing. All taxes, HOA fees, and utilities will be pro-rated at time of closing.

BUYER


Lisa Clapier

Date: July 30, 2014

SELLERS


Robert Rains
Betty Rains

Date: 7-18-14

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

1126 Santa Barbara Street
Santa Barbara, CA 93101

A true and correct copy of the foregoing document entitled (*specify*): NOTICE OF HEARING AND RESPONSE TO DAVID BLACKBURN'S OPPOSITION TO APPLICATION TO EMPLOY J. EDUARDO PINEDA MARTINEZ AS SPECIAL COUNSEL TO DEBTORS AND DEBTORS-IN-POSSESSION will be served or was served (**a**) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (**b**) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) August 7, 2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) August 7, 2014, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) August 7, 2014, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Personal Delivery
The Honorable Peter Carroll
U.S. Bankruptcy Court
1415 State Street
Santa Barbara, CA 93101

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

August 7, 2014
Date

Kimberlie Wagemann-Cordero
Printed Name


Signature

SERVICE LIST

Robert Lee and Betty Sue Rains
Chapter 11 Case No.: 9:14-bk-10379-PC

<u>SERVED ELECTRONICALLY</u>	<u>SERVED BY U.S. MAIL</u>
<p>Brian D Fittipaldi brian.fittipaldi@usdoj.gov Jonathan Gura jon@susigura.com, kim@susigura.com Yvonne Ramirez-Browning BANKRUPTCYCLS@wellsfargo.com, BANKRUPTCYCLS@wellsfargo.com Vincent Renda vr@rendalawoffices.com, ld@rendalawoffices.com Joseph M Sholder sholder@g-tlaw.com Ramesh Singh claims@recovervcorp.com Diane F Suchter ojailaw@verizon.net Peter Susi kim@susigura.com, peter@susigura.com United States Trustee (ND) ustpregion16.nd.ecf@usdoj.gov Gilbert R Yabes ch11ecf@piteduncan.com; GRY@ecf.inforuptcy.com</p>	<p><u>Debtors</u> Robert Lee Rains and Betty Sue Rains 12147 Old Walnut Road Ojai, CA 93023</p>